TESTIMONY OF
J. SHELBY BRYAN
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
ICG COMMUNICATIONS, INC.
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I. Introduction and Summary

Good morning. Thank you for the opportunity to appear before you today to talk about telecommunications policy and the reciprocal compensation and broadband legislation the committee is considering. I am J. Shelby Bryan, Chairman and Chief Executive Officer for ICG Communications, Inc..

Based in Englewood, Colorado, ICG Communications is the country's largest, independent, facilities-based competitive local exchange carrier (CLEC). ICG is not affiliated with any cable company, long distance provider, or -- importantly for today's hearing -- any Internet service provider (ISP). ICG operates a nationwide communications network that provides integrated telecommunications services to over 700 cities. ICG primarily serves small to medium sized businesses, interexchange carriers (IXCs), and ISPs. ICG is an industry leader, furnishing services to more than 500 ISP customers, and providing Internet access for approximately 10 percent of the nation's dial-up Internet traffic. In fact, in 1999 approximately 30 percent of all Internet traffic in California traveled over ICG's network.

When I look at the Commerce Committee's roster, I see a number of Senators in whose state ICG operates. ICG has a significant presence in Texas and several states in the Southeast, including Georgia and Tennessee, and is expanding its service offerings to new markets, including Phoenix, Boston, Seattle, Las Vegas, and Portland, Oregon.

I look forward to speaking with all of you today in an effort to resolve the important reciprocal compensation and broadband deployment issues before us.

A. ICG Opposes Senator Brownback's Proposal Because It Would Hurt New Competitors in the Telecommunications Marketplace

The reciprocal compensation and broadband provisions in Senator Brownback's bill would block CLECs' ability to compete effectively in the telecommunications marketplace. First, the reciprocal compensation provisions would prohibit CLECs' from recovering the very real costs of terminating ISP calls on their networks, thereby threatening CLECs' competitive position and even their viability. As incumbent local exchange carriers (ILECs) have said repeatedly, termination costs are real and, in accordance with longstanding cost recovery principles, should be paid by the entity causing the costs **B** in this case the ILEC. CLECs, which are just beginning to see profitability, cannot bear these ILEC-imposed costs themselves. Instead, CLECs likely would have to pass along price increases to ISPs, who in turn are likely to increase their monthly Internet access fees to consumers by as much as six dollars (in addition to monthly fees of approximately $10 to $30 per month). CLECs may choose to exit the ISP market because it no longer would be cost effective to serve ISPs. A dwindling number of CLEC competitors would diminish the quality and choices all customers now enjoy. ILECs would be allowed to leverage their monopoly position into the ISP market.

Federal legislation to end reciprocal compensation is a drastic move, especially in a context in which most regulatory bodies already have grappled with the issue. The states, represented by the National Association of Regulatory Utilities Commissioners (NARUC), have told Congress that this issue should be resolved by the state public utilities commissions. Indeed, 38 state commissions have already resolved the issue **B** 33 in favor of reciprocal compensation for ISP calls. The Federal Communications Commission (FCC) has told Congress that the issue is complex and should be considered in the context of the myriad other intercarrier compensation mechanisms currently in place. Federal and state courts have considered and are continuing to decide the issue; seven Federal District Courts and three Federal Appellate Courts have ruled in the CLECs= favor.

Perhaps most importantly, the marketplace already is working to resolve the issue. Most contracts (known as interconnection agreements under the Telecommunications Act of 1996 (Act)), had 3-year terms and are beginning to expire. During implementation of the Act, ILECs negotiated relatively high reciprocal compensation rates, assuming most of the payments would flow from CLECs to ILECs. But now, as the original contracts are being renegotiated, ILECs are bargaining for lower rates. Some new contracts have rates as low as 10 percent of the rates under the old contracts. Given that reciprocal compensation rates are falling, and that the states are using their authority under the Act to resolve conflicts when they arise, Congress need not change the law with regard to reciprocal compensation.

As to the broadband provisions of the bill, they are equally unnecessary as the Act and the market ultimately are working to bring technology and competition to consumers everywhere. The bill=s broadband provisions eliminate some of the Act=s local market opening requirements as they apply to packet-switched or advanced services. These requirements have allowed the CLEC industry to provide competitive alternatives, particularly in the broadband marketplace. This success has come despite a dizzying array of ILEC -- and especially Regional Bell Operating Company (RBOC) -- stall tactics, baseless lawsuits, and anti-competitive business practices that pre-date the Act but have worsened since the Act=s inception. By eviscerating these requirements for packet-switched and advanced services, Senator Brownback=s bill would limit CLECs= ability to offer broadband services via a packet-based system with many negative results. Competition for broadband services would be impeded, ILECs could re-dominate the market, and the very consumer benefits the Act sought to bring about through competition (*e.g.* lower prices, high quality services, and increased technological innovation) could be lost. Further, given that the CLEC industry is the driving force behind national broadband deployment, and that Senator Brownback's proposal would impede CLECs' ability to deploy broadband networks, the bill actually would have severely adverse unintended consequences.

II. The 1996 Telecommunications Act's Local Market Opening Provisions Have Allowed CLECs to Drive Broadband Deployment, Despite Continued Anti-Competitive ILEC Actions

The Act was designed to open the local telecommunications market to competition and create the consumer benefits that can only come through competition. The Act accomplishes this through a number of means, including interconnection, unbundling, and resale provisions. The Act allows CLECs to utilize, to a limited degree, and at cost-based rates, the network that ILECs constructed using captive ratepayer money acquired during the ILECs' monopolistic reign.

Following the Act's passage in 1996, CLECs were not immediately able to take advantage of the Act's market opening provisions. Despite the fact that the Act is a series of compromises to which the ILECs undeniably agreed, ILECs reverted to a variety of stall tactics, baseless lawsuits (fought at both the federal and state levels) and anti-competitive business practices to prevent full implementation of the Act's market opening provisions.

As a result of these ILEC actions, local competition has been seriously impeded. Nevertheless, the last few years have seen the rise of the CLEC industry and, with it, a dramatic increase in competition in the telecommunications market. As of the end of 1999, there were over 375 CLECs in the United States, including 333 facilities-based CLECs, employing over 70,000 people. These companies have deployed over 820 voice switches and 1,400 data switches, 10.4 million access lines, and over 4 million miles of fiber. In 1996, the combined CLEC market capitalization was $3.1 billion. Today, that number is $85 billion. Further, both institutional and private sources are investing record amounts in CLECs at all stages of the capital formation cycle. By undermining fundamental provisions in the Act, Senator Brownback's bill jeopardizes CLECs and the competitive benefits they have brought to the market.

A. The Reciprocal Compensation Provisions of Senator Brownback's Bill Would Harm Competition, Consumers and the Development of the Internet

1. Reciprocal Compensation Pays For Real Costs and Repealing ILECs' Obligations to Pay These Costs Will Result in Great Harm to Competition

At the outset, it bears emphasizing that reciprocal compensation pays for real costs -- it is not a suspect revenue source, but rather a legitimate, regulator-sanctioned method for recovering these real costs when two local carriers handle a call. A reciprocal compensation system initially was adopted at the insistence of the Bell companies, when the traffic was imbalanced in their favor. Now that there is an imbalance in the favor of competitors, the Bell companies have attacked the system as somehow illegitimate.

The costs of terminating calls to ISPs are the same as the costs of terminating any local call; the transport from the hand-off point (or Apoint of interconnection@) to the terminating switch, plus the switching and delivery of the call to the called number. From a cost point of view it is irrelevant whether the call is terminated to a residence, a business, or an ISP. All calls appear as local calls that are terminated to a local customer -- and ISPs are simply local customers of a local exchange carrier. Since 1983, the FCC has enforced a policy that allows ISPs to purchase local service rather than access service and, as a result, when consumers access ISPs, they dial a local number and do not pay toll charges.

Congress, the FCC, the states, and the industry all have recognized that termination costs are real and should be compensated. Congress has found that reciprocal compensation is Aintegral to a competing provider seeking to offer local telephone services over its own facilities.@[1] Congress provided under the Act that each local exchange carrier or ALEC@ (whether the incumbent or a new competitor) is required to pay the other for these costs.[2] The FCC has found that Acarriers incur costs in terminating traffic that are not *de minimis*, and consequently bill-and-keep [the absence of reciprocal compensation] arrangements that lack any provisions for compensation do not provide for recovery of

[1] H.R. Rep. No. 104-104, pt.1, at 72 (1995).

[2] 47 U.S.C. 251(b)(5).

costs.@[3] Thirty-three of 38 states that have considered the issue have held that dialing a local number to reach your ISP should be treated like a local call eligible for reciprocal compensation. No federal court which has reviewed this issue has decided against payment of reciprocal compensation. Even the incumbents have recognized that a terminating carrier incurs real costs that should be compensated.[4]

Forcing CLECs to incur uncompensated costs by eliminating reciprocal compensation for ISP traffic will weaken the CLECs= competitive position. CLECs have begun to prosper in the local market, due in large part to the pro-competitive provisions of the Act, and Congress should not act to threaten this progress. CLECs have been more successful than ILECs in attracting ISP customers because CLECs provide state-of-the-art fiber-based infrastructure, better rates, and services (such as collocation) that are more tailored to ISPs= demands. ISPs are particularly telecommunications-intensive businesses, given that the Internet depends on telecommunications for its very existence. Therefore, ISPs have enormous needs for high volume, high capacity, and high quality services. The ILECs have failed to address adequately the high growth Internet access market and, in doing so, have

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[3] *See First Report and Order, Implementation of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, & 1112 (1996), modified on recon., 11 FCC Rcd 13042 (1996).

[4] *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Reply Comments of Bell Atlantic at 20 (May 30, 1996) (AThe most blatant example of a plea for a government handout comes from those parties who urge the Commission to adopt a reciprocal compensation price of zero, which they euphemistically refer to as >bill and keep.= A more appropriate name, however, would be A<u>bilk and keep</u>@ since it will bilk the LECs= customers out of their money.... [A] regulatorily mandated price of zero B by any name B would violate the Act, the Constitution, and sound economic principles.@).

lost out to the CLECs. Because of this success by competitors, the ILECs seek to strangle competition by making it economically impossible for CLECs to serve ISPs. This motivation is even more clear when one considers that every ILEC also is an ISP.

Let me give you one example of the power of competition in the local telephone market. In June, a part owner of a small family-run ISP from the rural town of Mt. Shasta, California spoke at a Congressional briefing about his experience receiving service from a CLEC. He recounted the following. First, he found that switching from the ILEC to a CLEC enabled his company, SnowCrest, Inc., to collocate its equipment at the CLEC=s premises, providing enhanced quality and greater efficiency. SnowCrest also purchased local points of presence (POPs) from the CLEC to enable SnowCrest=s customers to reach the Internet without incurring toll charges by dialing a local telephone number. The ILEC did not provide these services. SnowCrest reported that it took the ILEC 30 days to fulfill an order for new lines and one to three weeks to repair any problems resulting from improper installation. Orders placed to a CLEC took only seven to 10 days to fulfill and repairs on improper installations were made in one day. This story is but one example of how competition has brought benefits to consumers and has spurred the development of the Internet.

If CLECs are forced to incur uncompensated costs, they inevitably will respond in one of several ways. First, CLECs could simply bear the costs. As a result, CLECs would become less viable local exchange competitors than ILECs, who will not bear such uncompensated costs. Second, CLECs may be forced to pass along price increases to ISPs, in which case those ISPs likely will increase their monthly Internet access prices to consumers. It is estimated that eliminating reciprocal compensation for ISP calls could cause Internet prices for consumers to rise by more than six dollars per month in addition to monthly fees that range from $10 to $30. Congress has made it a matter of national policy to close the Adigital divide@ and has manifested its intention that access charges not be levied on the Internet. Congress clearly recognizes the importance of maintaining reasonable Internet access prices. An increase of more than six dollars per month for an average consumer could have a wide impact. Right now, 129 million Americans have access to the Internet -- over 125 million of whom use a local telephone connection to gain that access. At a time when ubiquitous access to the Internet is a national priority, Congress should not pass legislation that would make the Internet more expensive for American consumers.

A third CLEC response to the burden of uncompensated costs would be for CLECs to decline to serve the ISP market. Fewer CLECs serving ISPs naturally would result in fewer choices for ISPs. This outcome is especially disturbing since the ILECs also are ISPs, which motivates them to stifle the availability of quality services to their competitor ISPs. Ultimately, ISPs could be left to rely solely on the ILEC for service in a monopoly environment, the very situation the Act sought to correct by encouraging the development of local competition.

Finally, changing the reciprocal compensation mechanism now, once the CLECs have begun effectively to serve this market, will have serious effects on CLECs= continuing ability to raise capital. If

Congress changes the competitive landscape, investors surely will become hesitant to fund CLECs. Because local services (wired or wireless) are extremely capital intensive, CLECs must regularly seek additional capital from both debt and equity markets, and they rely on a predictable regulatory framework to reassure investors. Forcing uncompensated costs on the competitive industry will endanger investment in the short term and in the long term will send a negative signal to capital markets about the stability and the future prospects of CLECs. Further, if CLECs become less viable in the market, raising capital to expand into broader telecommunications markets, including residential and business services, will become increasingly difficult. CLECs would be crippled in their efforts to build the very facilities that are needed to bring about Congress’ pro-competitive vision when it passed the Act.

2. Congress Should Defer to the States, the FCC, and the Marketplace

Congress should allow the states and the FCC to resolve reciprocal compensation issues. The legislation unreasonably usurps state regulatory authority and prevents regulators from ensuring that CLECs are compensated for their costs. The state public utilities commissions (PUCs), guided by the Act, have significant experience determining rates for a number of components of an interconnection agreement, of which reciprocal compensation is just one. States also have authority under the Act to resolve disputes arising from interconnection negotiations and to set rates for interconnection. The majority of the states have exercised the authority given to them by the Act to consider and resolve reciprocal compensation issues and have completed their proceedings. Given the history of the PUCs in resolving reciprocal compensation issues, there is no reason to isolate reciprocal compensation now and remove it from the states’ authority.

The states, represented by NARUC, testified before the House of Representatives on June 22, 2000. NARUC told the House Telecommunications Subcommittee that

> The reciprocal compensation issue is best addressed through the existing statutory and regulatory framework in the Act. Under the Act, incumbent and competitive carriers are required to negotiate reciprocal compensation payments. If these negotiations break down, state

commissions are given the responsibility to arbitrate any disputes.[5]

[5] Hearing of the U.S. House of Representatives Committee on Commerce, Subcommittee on Telecommunications, Trade, and Consumer Protection, Regarding AH.R. 4445, to exempt from reciprocal compensation requirements telecommunications traffic to the Internet@ (AHouse Reciprocal Compensation Hearing@) Written Testimony of The Honorable Joan Smith, Commissioner, Oregon Public Utilities Commission and Chair, NARUC Telecommunications Committee at 4.

CLEC claims about the detrimental effects of legislation to eliminate reciprocal compensation for ISP calls have been seconded by NARUC. NARUC testified that such legislation would raise ISPs= costs, in turn raising prices for access to the Internet for most consumers. Further, CLECs are required by law to transport and terminate all calls; thus, preventing CLECs from recovering the associated costs may constitute a Ataking@ of their property without compensation. According to NARUC, Ait changes the Act so that a business is required to provide a service for free to its competitors.@[6] The states have determined that CLECs should be compensated for their costs and Congress should not usurp the states= authority to do so.

States play a key reciprocal compensation role. In fact, the states have a critical role in regulating other aspects of how, and if, CLECs can operate. One of the more spurious arguments against reciprocal compensation for ISP traffic is that there are Asham@ CLECs that operate only to receive reciprocal compensation payments for their ISP affiliates. The states have -- and always have had -- the authority to determine which competitors will be authorized to compete in their state and under what terms and conditions. If ISPs were to attempt to become CLECs for purposes of collecting reciprocal compensation only -- with no intention of providing local service -- they would be hard pressed to pass muster with the states. The states have the authority to require competitors to provide local service to non-ISP customers or to impose other requirements on behalf of the public interest. If there were, in fact, Asham@ CLECs, states are well equipped to discipline them.

The FCC currently is considering intercarrier compensation, and opened a rulemaking on June 23, 2000, to solicit comment on a reciprocal compensation case recently remanded by the U.S. Court of Appeals for the D.C. Circuit. Larry Strickling, the FCC=s Common Carrier Bureau Chief, testified before the House Telecommunications Subcommittee that resolution of the issue is complex and must necessarily be made in the broader context of all intercarrier compensation mechanisms.[7] Mr. Strickling cautioned the Subcommittee against singling out ISP calls and setting up a separate regime. He further testified that state commissions and state courts are well-equipped to dispose of any cases of fraud by an ISP. The FCC=s testimony reinforces the fact that the resolution of reciprocal compensation issues is a complex task that should not be dealt with through legislation that dramatically restructures intercarrier compensation for just one segment of the telecommunications market. Against this backdrop, the House Commerce Committee has given the FCC until September 30, 2000, to act, and Members of the Senate also have urged the FCC to act by that time. The FCC has stated its intention to meet that deadline.

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[6] *Id*. at 3.

[7] House Reciprocal Compensation Hearing, Testimony of Lawrence Strickling, Chief, Common Carrier Bureau, Federal Communications Commission, *Federal News Service Transcript*.

Not only have regulatory bodies successfully tackled reciprocal compensation, but the market also is working to set reciprocal compensation rates at the appropriate level. The original interconnection agreements that govern the payment of reciprocal compensation are in the process of being renegotiated. As new contracts are negotiated, ILECs are asking for lower reciprocal compensation rates. Some new contracts have rates as low as 10 percent of the rates in the original interconnection agreements. As the competitive market continues to develop, rates naturally will reach the appropriate level that reflects costs, as would happen in a free market. Given time, the market will resolve the issue on its own.

In the past, ILECs have recognized that a truly competitive market will operate to regulate the level of reciprocal compensation rates. During the implementation of the Act, when ILECs argued that they must be compensated for the use of their networks by competitors, those competitors worried that incumbents -- believing that they would be the recipients of the bulk of the payments -- would set reciprocal compensation rates unreasonably high. To assuage the FCC, Bell Atlantic argued:

> If these rates are set too high, the result will be that new entrants, who are in a much better position to selectively market their services, will sign up customers whose calls are predominantly inbound, such as credit card authorization centers and Internet access providers. The LEC would find itself writing large monthly checks to the new entrant. By the same token, setting rates too low will merely encourage new entrants to sign up customers whose calls are predominantly outbound, such as telephone solicitors.[8]

[8] Reply Comments of Bell Atlantic, *supra* note 4, at 21.

Ultimately, the incumbents negotiated relatively high rates, thinking they would collect more than they paid, but instead they ended up paying more than they collect and asking Congress for relief. It bears noting that in cases in which the ILECs have stood to gain from reciprocal compensation, they have argued not only for high rates, but also have defended imbalances in traffic when that imbalance is financially in their favor. In the wireless context, for example, most wireless customers use their phones to dial wireline customers, but do not receive very many calls from the wireline network. ILECs terminate about four times as many calls from wireless networks as wireless providers terminate from the wireline network. Despite this dramatic imbalance in traffic, ILECs have argued that the ratio of traffic is immaterial, and that only the costs imposed on the terminating carrier should be considered.[9] The ILECs= current statements that reciprocal compensation should not be paid when traffic is imbalanced should be viewed in the context of their arguments to the contrary when they are the beneficiaries. In reality, these payments are based on real costs and their rates should be negotiated by the parties in the market. Where, as here, market forces are at play, Congress need not intervene.

Congress has stated its intention to foster the growth of the Internet by creating an environment where no additional costs are imposed on Internet access. Congress also has manifested its commitment to creating a competitive telecommunications market through its passage of the Act by an overwhelming margin. Given the important objectives embodied in the Act, Congress should not pass legislation that threatens the growth of the Internet, the prices Americans pay for Internet access, and the viability of competition for local telecommunications services.

B. The 1996 Telecommunications Act=s Market Opening Requirements Are Working to Stimulate Broadband Deployment

1. CLECs Are Driving Broadband Deployment

The competitive telecommunications industry currently is deploying broadband service at a staggering pace and CLECs are among the industry leaders in the provision and deployment of Digital Subscriber Line (DSL) service. Recent figures indicate that CLECs supply over 100,000 DSL lines, and the CLEC market share of DSL lines at the end of 1999 was approximately 20 percent. As a result, CLECs now are able to offer DSL broadband service to roughly 25 percent of the addressable market in the country, a number that will grow as the competitive industry continues to deploy broadband networks.

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[9] *See, e.g.*, Letter by Michael K. Kellogg to FCC Chairman William Kennard enclosing report by Professor Richard A. Epstein, *Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, 15-16 (May 16, 1996) (Bell Atlantic and SBC Communications recognized in 1996 that 85 percent of all wireless calls originate via wireless telephones and are terminated on the ILEC network. Bell Atlantic and SBC nonetheless argued that ILECs should be compensated for the costs of terminating wireless calls.).

This push by competitive carriers to deploy broadband service has created a tremendous amount of competition within the broadband marketplace, and has resulted in the proliferation of advanced service offerings by both competitive and incumbent carriers, aggressive broadband service deployment schedules, and the significant benefit to consumers of high-speed Internet access at rates that are declining remarkably quickly. For example, SBC recently announced that it will slash rates and waive installation fees for its residential DSL service. Through its AProject Pronto@ initiative, the company says it will provide DSL service to 77 million customers by 2002. Further, the RBOCs all have announced a significant acceleration of their broadband deployment schedules to counter CLEC deployment. Just as the Act intended, the incumbents are being forced to respond to competition initiated by CLECs.

Other industry segments also contribute to the rapid increase in broadband deployment. For example, cable companies, terrestrial and satellite wireless telecommunications providers, fixed and mobile wireless companies and other new entrants, including electric utilities, now offer broadband services. Currently, approximately 2 million U.S. customers access the Internet through cable modems with 7,000 new cable modem customers being added every day. The spread of broadband services has even reached rural communities and previously underserved areas. Many rural telecommunications companies, both private and cooperatives, are upgrading their systems to provide broadband services. Thus, rewriting the Act to increase the deployment of broadband services in rural areas is unnecessary.

2. The Bill=s Broadband Provisions Would Limit CLECs= Ability to Compete in the Broadband Marketplace, and Ultimately Would Impede Broadband Deployment

Senator Brownback=s bill would undermine the Act=s local competition provisions. First, Senator Brownback=s bill would remove an ILEC=s interconnection, unbundling, and collocation requirements for packet-based networks, and remove its resale requirements with regard to the provision of advanced services, provided that the ILEC meets certain build out requirements. Further, the bill would remove ILEC interconnection and unbundling requirements for optical fiber used to provide residential telecommunications service where the fiber is capable (or will be capable through an electronics upgrade) of providing high-speed data, VHS-quality video, and telephone exchange service, again dependent on build out requirements. The impact of these provisions on CLECs= ability to offer broadband services would be devastating. Denied access to ILECs= networks, CLECs would suffer. Competition in telecommunications cannot happen without the interconnection of competing providers= networks on fair terms and conditions and at reasonable rates. Without interconnection, no competitor could raise funds to deploy broadband services.

Second, if the FCC finds that an ILEC operates in an exchange in which a competitor also provides advanced services, the FCC must grant that ILEC unconditional pricing flexibility. The bill does not require actual competition to be present for ILECs to attain this pricing flexibility. Instead, as noted, the mere presence of a single competitive provider, regardless of the actual extent of competition in that exchange, will trigger pricing flexibility. As a result of this provision, in areas where an ILEC faces competition only from a single, small competitor, the ILEC would be able to lower its prices for advanced services to anti-competitive levels that the competitive provider could never match. In this way, the ILECs would assert their market power to restore their monopoly.

Third, ILECs that use remote terminals[10] to supply advanced services must provide competitors access to subloop network elements used for advanced services (such as a Digital Subscriber Line Access Multiplexer (DSLAM)) but would not be required to provide collocation at the terminals. The inability to collocate would force CLECs desiring to offer broadband services through a remote terminal to use the ILEC=s DSLAM located in the remote terminal. CLECs that use an ILEC=s DSLAM are locked into the service and technology the ILEC offers through that DSLAM. Thus, the CLEC would be prevented from offering the very innovative, technologically advanced services that the Act sought to promote, and consumers would be stuck with whatever service the ILEC decided to offer. The inability of competitors to collocate at ILEC owned remote terminals would, as a practical matter, seriously hamper CLECs= ability to offer DSL and other services.

Fourth, pursuant to Senator Brownback=s bill, ILECs would not be subject to the Act=s network elements unbundling requirements unless the elements in question Aare to be used *predominantly* to provide telephone exchange service,@ and telephone exchange service may not encompass broadband services. Although the language is not precise, this provision seems to limit CLECs= ability to buy network elements on an unbundled basis depending on what type of service is provided using those elements. As a result, data CLECs and traditional CLECs offering data services would not be able to purchase unbundled network elements necessary to offer broadband service, again severely limiting consumers= choices.

The bill does preserve CLECs= ability to gain access to ILECs= local copper loops. The value of this guarantee, however, is questionable. First, the bill implies that the Act was not meant to address packet-based and other advanced service networks. In actuality, Congress did intend for the Act to encompass packet-based networks. FCC Chairman William Kennard recently supported this view when he said that AThere was discussion of the Internet at that time [*i.e.* during consideration of the Act].@[11] Packet network technologies have been available and deployed for at least a decade. Further, telecommunications services are quickly migrating to a predominantly packet-based architecture that offers increased quality of service and cost efficiencies. Under Senator Brownback=s proposal, the CLEC industry would be relegated to using the older, less efficient copper based network when using ILEC unbundled network elements. Obviously, this result creates a distinct, unjustified, competitive advantage for the ILECs over their CLEC competitors.

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[10] Remote terminals are the gray or green metal boxes incumbents install near consumers= homes to aggregate traffic from several customers.

[11] House Judiciary Committee Hearing on Legislation Dealing with the Internet, Statement of William Kennard, Chairman, Federal Communications Commission, *Federal News Service Transcript*.

IV. Conclusion

If Congress is truly committed to promoting competition, innovation, and consumer choice in telecommunications throughout the nation, it should not amend the Act as Senator Brownback proposes. Instead, Congress must allow the marketplace to continue to develop as it has, with incumbents and competitors interconnecting their networks, passing traffic back and forth, and competing on fair and just terms.

I wholeheartedly agree with the goal of providing broadband services to every American. There is, however, a right way to go about doing this, and a wrong way. Targeted, specific solutions, such as the FCC=s *Advanced Services Order*[12] allowing limited LATA modifications to support the deployment of advanced services to rural and underserved areas, is representative of the right way. Wholesale gutting of the Act, causing certain crippling of the competitive local telecommunications industry, is the wrong way.

Congress instead should permit the market to resolve this issue. Decision making bodies with expertise and experience, such as the FCC and the states, will guide this process. In the end, consumers will continue to access the Internet at affordable prices.

ICG urges you to continue your longstanding commitment to competition in the telecommunications marketplace, and its resulting benefits to consumers, and oppose the Brownback bill. Thank you for the opportunity to testify here today.

[12] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Fourth Report and Order (adopted January 28, 2000, and released February 11, 2000).